

WEDNESDAY

THURSDAY

FRIDAY

MONDAY

TODAY

Questions and Comments

TODAY'S COLUMNS

LIBRARY

NEWS

RULINGS

VERDICTS

Search >>

Previous

Next

Bookmark Reprints

The Constitution protects the homeless too

Erwin Chemerinsky is dean and distinguished professor of law at the University of California, Irvine School of Law.



The 9th U.S. Circuit Court of Appeals' recent decision that the city of Los Angeles could not seize and immediately destroy the possessions of the homeless is clearly right as a matter of constitutional law and reflects some of the most important attributes we should expect of judges: compassion and common sense.

In *Lavan v. City of Los Angeles*, 2012 DJDAR 12545 (9th Cir. Sept. 5, 2012), the 9th Circuit affirmed a preliminary injunction issued by the federal district court which prevents the city from seizing property in Skid Row absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, or is evidence of a crime, or contraband. The injunction also prevents the city from destroying the property, absent an immediate threat to public health or safety, without maintaining it in a secure location for a period of not less than 90 days.

The plaintiffs in the lawsuit are homeless individuals who live on Skid Row in Los Angeles. Like many homeless individuals, they store their personal possessions - including personal identification documents, family memorabilia, birth certificates, medications, family memorabilia, toiletries, cell phones, sleeping bags and blankets - in mobile containers provided to homeless persons by social service organizations. Often these are EDARs - small, collapsible mobile shelters provided to homeless persons by Everyone Deserves a Roof, a nonprofit organization.

Los Angeles has an ordinance which provides: "No person shall leave or permit to remain any merchandise, baggage or any article of personal property upon any parkway or sidewalk." Los Angeles Municipal Code Section 56.11. Signs were posted throughout the Skid Row area warning that street cleaning would be conducted Monday through Friday between 8:00 a.m. and 11:00 a.m. and that any unattended property left at the location in violation of the ordinance would be disposed of at the time of clean-up.

The case arose because of instances in which city employees seized and destroyed the plaintiffs' possessions when the plaintiffs stepped away from their personal property, leaving it on the sidewalks, to perform necessary tasks such as showering, eating, using restrooms or attending court. City employees did this even though they did not believe that the possessions had been abandoned; on some of the occasions where this occurred, others were present and explained that the owner had not abandoned the property, but was just away for a brief time.

It is simply not correct to assume that a homeless person has abandoned his or her

SPECIAL REPORT

Top 100



Tuesday, September 18, 2012

Law Practice

Hogan hires new NorCal IP team

Hogan Lovells US LLP has acquired five new intellectual property partners, including a four-partner team from the San Jose office of Haynes and Boone LLP, in a bid to reach more Asia-based clients.

California Courts of Appeal

Appellate court publishes decision blocking city outsourcing

On Monday, Division 3 of the 4th District Court of Appeal published a previously unpublished decision upholding a preliminary injunction blocking the city of Costa Mesa from outsourcing to the private sector.

Litigation

Brown signs bill capping depositions at seven hours

Under a measure signed into law Monday by Gov. Jerry Brown, depositions in most cases will be limited to less than seven hours. Exceptions apply in complex or employment law cases.

Immigration

Law professors urge Brown to sign immigration bill

More voices are calling on Gov. Jerry Brown to sign a bill into law that would put strong limitations on local law enforcement's participation in the federal government's immigration detention program.

Government

Legislative session's close a mixed bag for attorneys

Groups representing plaintiffs and defendants won some, lost some in final legislative session that was focused on pension reform.

Labor/Employment

Zynga's counterclaim touches on anti-competition issues

If media reports are correct, Zynga Inc. may have reached an agreement with competitor Electronics

property by leaving it unattended.

The 9th Circuit, in an opinion by Judge Kim Wardlaw, found that the city violated both the Fourth Amendment and the due process clause of the 14th Amendment. As for the former, the court explained that the city's action was a seizure of the property and did not meet the reasonableness requirement imposed by the Fourth Amendment. In balancing the competing interests, the court found that the harm to the individuals in the loss of all of their possessions outweighed the city's need to destroy the property in cleaning the streets.

As for due process, the court said that the "case concerns the most basic of property interests encompassed by the due process clause: Appellees' interest in the continued ownership of their personal possessions." The government should not be able to destroy any person's property without providing due process.

Judge Consuelo Callahan, in dissent, argued that there is not a Fourth Amendment violation because individuals have no reasonable expectation of privacy in their unattended property and there is no due process violation because individuals do not have a property interest in unattended property. But this is right only if the unattended property is regarded as having been abandoned by the owner. It is simply not correct to assume that a homeless person has abandoned his or her property by leaving it unattended. In many instances, others there told the police that the owner was only temporarily away to use the restroom or get food or get medical care.

Even if police have a reasonable belief that the property has been abandoned, there is no justification for summarily destroying it. The police should be required to keep it for a period of time to allow it to be claimed. As Judge Wardlaw noted: "As we have repeatedly made clear, '[t]he government may not take property like a thief in the night; rather, it must announce its intentions and give the property owner a chance to argue against the taking.' This simple rule holds regardless of whether the property in question is an Escalade or an EDAR, a Cadillac or a cart. The city demonstrates that it completely misunderstands the role of due process by its contrary suggestion that homeless persons instantly and permanently lose any protected property interest in their possessions by leaving them momentarily unattended in violation of a municipal ordinance. As the district court recognized, the logic of the city's suggestion would also allow it to seize and destroy cars parked in no-parking zones left momentarily unattended."

The 9th Circuit's ruling does not prevent the city from cleaning the streets of Skid Row. Nor does it prevent the city from seizing contraband or anything hazardous that presents an immediate threat to public health or safety. Ultimately, the district court and the 9th Circuit simply held that a homeless person's possessions cannot be destroyed just because they have been left temporarily unattended.

In this way, it is a decision based on elemental human decency. None of us can imagine the day-to-day existence of those who are homeless and live on Skid Row. But we can imagine the horror of finding that all of our possessions in the world were destroyed by the police. This is not any less so for a homeless person. The Constitution protects everyone's property from seizure or destruction. This includes the homeless too.

[Previous](#) [Next](#)

Arts Inc. last year to limit recruitment of their rival's employees.

U.S. Court of Appeals for the 9th Circuit 9th Circuit says it's no crime for political parties to endorse judicial candidates

A 9th Circuit panel voted 2-1 late Monday to temporarily halt enforcement of Montana's law making it a criminal offense for any political party to support judicial candidates.

Environmental

Prosecutors reach settlement with utility over wildfire

The U.S. attorney's office in the Southern District of California announced Monday it reached a \$6.4 million settlement with San Diego Gas & Electric Co. over a 2007 fire that burned more than 44,000 acres.

Judges and Judiciary

San Francisco complex litigation documents must be e-filed, court announces

All complex litigation civil documents in San Francisco County Superior Court must now be filed electronically, Court Executive Officer T. Michael Yuen announced Monday.

Memorial session for Judge Browning set for Friday

A memorial session for the late Chief Judge Emeritus James R. Browning of the 9th Circuit is set for Friday in San Francisco at the federal courthouse named in his honor.

Mergers & Acquisitions

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

U.S. Court of Appeals for the 9th Circuit The Constitution protects the homeless too

The 9th Circuit upheld a preliminary injunction preventing the city of LA from seizing property on Skid Row absent an objectively reasonable belief that the property is abandoned. By **Erwin Chemerinsky** of UC Irvine School of Law

Tax

Lawyers today more likely to 'meet' the IRS crime division

One especially frightening development involves grand jury subpoenas to produce your own offshore bank records. Most lawyers have a knee-jerk reaction to this. By **Robert W. Wood** of Wood LLP

Corporate

Restricting the capacity to sue of improperly registered companies